

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Master File No. 2:22-cv-01282-JLR

*In Re: Zillow Group, Inc. Session
Replay Software Litigation*

This Document Refers to: All Actions

**COMBINED JOINT STATUS
REPORT AND DISCOVERY
PLAN PURSUANT TO
FED. R. CIV. P. 26(f) AND
LOCAL CIVIL RULE 26(f)**

Plaintiffs Natalie Perkins, Kenneth Hasson, Jamie Huber, David Kauffman, Mark Conlisk, Michael Dekhtyar, Ashley Popa, Jill Strelzin, Jill Adams, as natural mother and next friend of her minor child, H.A., and Ryan Margulis, (collectively, “Plaintiffs”) and Defendants Zillow Group, Inc. (“Zillow”) and Microsoft Corporation (“Microsoft”) (collectively, with Zillow, “Defendants”), by and through undersigned counsel, hereby submit the following Joint Status Report and Discovery Plan pursuant to Federal Rule of Civil Procedure 26(f), Local Civil Rules 16 and 26(d), this Court’s Order regarding Initial Disclosures, Joint Status Report and Early Settlement dated February 24, 2023, and the Court’s Standing Orders.

I. NATURE AND COMPLEXITY OF CASE

Plaintiffs allege in this litigation that Zillow violated two-party consent wiretapping laws and invaded Plaintiffs’ privacy by procuring and embedding snippets of JavaScript computer code (“Session Replay Code”) on its website, www.zillow.com, which Plaintiffs allege then deploys on each website user’s internet browser for the purpose of intercepting,

1 collecting, monitoring, and recording website visitors' electronic communications with the
2 Zillow website, allegedly without their consent. Plaintiffs allege these claims on behalf of
3 overlapping state and nationwide putative classes.

4 Pursuant to this Court's February 22, 2023 Order (Doc. No. 38), Plaintiffs shall file a
5 consolidated amended complaint or designate an operative complaint no later than April 10,
6 2023. Within sixty days of service of the consolidated amended complaint or operative
7 complaint, Defendants must answer, move, or otherwise respond to the consolidated amended
8 complaint or operative complaint. Defendants currently anticipate filing motions to dismiss the
9 consolidated amended complaint or operative complaint.

10 **II. PROPOSED DEADLINE FOR JOINING ADDITIONAL PARTIES**

11 The parties will propose a deadline for joining additional parties as part of a proposed
12 discovery plan and schedule to be submitted after the Court resolves Defendants' anticipated
13 motions to dismiss.

14 **III. CONSENT TO MAGISTRATE**

15 The parties respectfully do not consent to have this case heard by a Magistrate Judge.

16 **IV. DISCOVERY PLAN**

17 **A. INITIAL DISCLOSURES**

18 The Rule 26(f) conference was conducted on March 9, 2023. The Rule 26(a) initial
19 disclosures will be made on April 24, 2023.

20 **B. SUBJECTS, TIMING AND POTENTIAL PHASING OF DISCOVERY**

21 The parties propose to defer merits discovery during the briefing and pendency of
22 Defendants' anticipated motions to dismiss. During this period, the parties will negotiate and
23 propose modified versions of the Court's Model Agreement Regarding Discovery of
24 Electronically Stored Information and the Court's Model Stipulated Protective Order. The
25 parties will also commence discussions regarding preservation, search methodologies and
26 sources of documents and information relevant to the parties' claims and defenses. Upon
27

1 resolution of Defendants' anticipated motions to dismiss, the parties will meet and confer
2 regarding a proposed discovery plan and schedule. At this time, the parties do not believe that
3 phasing of discovery is necessary.

4 **C. ELECTRONICALLY STORED INFORMATION**

5 The parties intend to propose modified versions of the Court's Model Agreement
6 Regarding Discovery of Electronically Stored Information and the Court's Model Stipulated
7 Protective Order.

8 **D. PRIVILEGE ISSUES**

9 The parties intend to propose modified versions of the Court's Model Agreement
10 Regarding Discovery of Electronically Stored Information and the Court's Model Stipulated
11 Protective Order, which will include provisions governing the inadvertent production of
12 privileged material.

13 **E. PROPOSED LIMITATIONS ON DISCOVERY**

14 The parties do not believe that there should be any limitations to discovery other than
15 those set forth in the Federal Rules of Civil Procedure, the Local Rules, and the Orders of this
16 Court except as noted below:

17 A party who serves a subpoena in this matter on a non-party, shall prior to or at the time
18 of serving the subpoena on that non-party, provide a copy of the subpoena and all attachments
19 thereto to the other parties. A party who receives documents from a third party pursuant to
20 subpoena will reproduce those documents to the other parties within five (5) business days.
21 When reproduction of documents within five (5) business days is not possible, the party who
22 received the documents will provide prompt notice to the other parties and will work in good
23 faith to resolve the issue on a case-by-case basis.

24 A party scheduling the deposition of a third party shall meet and confer with the other
25 parties about a mutually agreeable time and location prior to finalizing the deposition.
26
27

1 The parties agree to serve documents by email to counsel of record, or if the documents
 2 are voluminous, by FTP, Dropbox, or other secure internet file services. The parties will use
 3 best efforts to serve documents filed under seal by email, or too voluminous, by FTP or other
 4 internet file service within an hour of filing. The parties agree to meet and confer regarding the
 5 production of discovery in the action.

6 Any party may later move to modify these limitations for good cause.

7 **F. THE NEED FOR ANY ADDITIONAL DISCOVERY RELATED**
 8 **ORDERS**

9 The parties intend to propose modified versions of the Court's Model Stipulated
 10 Protective Order and Model Agreement Regarding Discovery Electronically Stored
 11 Information as described in paragraph 4(C), *supra*.

12 **V. THE PARTIES' VIEWS, PROPOSALS AND AGREEMENTS REGARDING**
 13 **RULE 26(f)(1)**

14 **A. PROMPT CASE RESOLUTION**

15 The parties believe the case may be appropriate for alternative dispute resolution.

16 **B. ALTERNATIVE DISPUTE RESOLUTION**

17 The Parties believe this case may benefit from private mediation and will endeavor to
 18 schedule mediation as soon as it appears to the Parties that mediation could be fruitful.

19 **C. RELATED CASES**

20 On March 2, 2023, the putative class action captioned as *Popa v. PSP Group LLC, et.*
 21 *al.*, No. 2:23-cv-00294-JLR ("*Popa*"), was transferred from the United States District Court for
 22 the Western District of Pennsylvania to this Court and assigned to Judge Robart. Ms. Popa,
 23 who is also a plaintiff in this matter, alleges in the PSP Litigation that PSP violated
 24 Pennsylvania wiretapping laws and invaded Plaintiffs' privacy under Pennsylvania common
 25 law by allegedly using Session Replay Code on its website, www.petsuppliesplus.com,
 26 allegedly to collect, monitor, and record website visitors' electronic communications, allegedly
 27 without their consent. Ms. Popa alleges these claims on behalf of a Pennsylvania class. The

1 parties have agreed to coordinate discovery between this case and *Popa* to save judicial and
2 party resources and avoid unnecessary duplication of effort. The parties have also stipulated to
3 set the deadline to respond to the complaint in *Popa* to align with the deadline to respond to the
4 consolidated complaint in this matter. *See Popa*, No. 2:23-cv-00294-JLR, Dkt. 49.

5 **D. DISCOVERY MANAGEMENT**

6 The parties agree to abide by the limitations on discovery imposed by the Federal Rules
7 of Civil Procedure, Local Civil Rules, and Judge Robart's standing order on discovery disputes,
8 and agree:

9 (i) to use expedited procedures for resolving discovery disputes, when appropriate,

10 (ii) to share discovery from third parties with the costs to be borne by the requesting
11 party,

12 (iii) to schedule discovery or case management conferences with the judge assigned to
13 this case as necessary,

14 (iv) to present discovery disputes to the court by informal means such as joint telephone
15 conferences with the Court and/or utilizing the expedited discovery dispute procedures
16 described in Local Rule 37(a)(2), and

17 (vi) to request other Orders under Local Rule 16(b) and (c) as necessary.

18 The parties reserve their rights to expand the limitations on discovery at a later date.

19 **E. ANTICIPATED DISCOVERY SOUGHT**

20 The parties anticipate conducting discovery on the claims asserted in the consolidated
21 amended complaint and any defenses thereto.

22 **F. PHASING MOTIONS**

23 The parties do not currently seek to phase motions but reserve the right to request such
24 phasing if at a later point such an approach appears appropriate.

G. PRESERVATION OF DISCOVERABLE INFORMATION

The parties do not foresee issues with the preservation of or production of electronically stored information, subject to any applicable objection or privilege. The parties intend to address this topic in more detail in their proposed modified version of the Court's Model Agreement Regarding Discovery Electronically Stored Information.

H. INADVERTENT PRODUCTION/PRIVILEGE

The parties intend to propose modified versions of the Court's Model Agreement Regarding Discovery of Electronically Stored Information and the Court's Model Stipulated Protective Order, which will include provisions governing the inadvertent production of privileged material.

I. MODEL PROTOCOL FOR DISCOVERY OF ESI

The parties intend to propose a modified version of the Court's Model Agreement Regarding Discovery of Electronically Stored Information.

J. ALTERNATIVES TO MODEL PROTOCOL

The parties intend to propose a modified version of the Court's Model Agreement Regarding Discovery of Electronically Stored Information.

VI. COMPLETION OF DISCOVERY

The parties will meet and confer regarding a joint proposed discovery plan, including the completion of discovery, upon the Court's resolution of Defendants' anticipated motions to dismiss.

VII. BIFURCATION

At this time, the parties do not believe that the case should be bifurcated. The parties, however, reserve the right to seek bifurcation.

VIII. PRETRIAL STATEMENTS

The parties do not wish to dispense with pretrial statements or pretrial orders required by Local Civil Rules 16(e), (h), (i), and (k), and 16.1.

IX. INDIVIDUAL TRIAL PROGRAM

The parties do not intend to utilize the Individualized Trial Program set forth in Local Rule 39.2.

X. OTHER SUGGESTIONS

A. SERVICE BY ELECTRONIC MEANS

The parties agree that courtesy copies of all documents, including motions, discovery requests and responses, shall be sent to one another by email or FTP transfer, and that such transmission shall be accepted as service pursuant to Federal Rule of Civil Procedure 5(b)(2)(E).

XI. TRIAL DATE

The Parties propose that the Court defer on scheduling a date for trial until after the resolution of Plaintiffs' motion for class certification.

XII. TRIAL BY JURY

Plaintiffs have requested a jury trial.

XIII. NUMBER OF TRIAL DAYS REQUIRED

The parties currently estimate that the duration of the trial will be approximately fourteen jury dates.

XIV. CONTACT INFORMATION FOR TRIAL COUNSEL

A. EXPECTED TRIAL COUNSEL FOR PLAINTIFFS IS:

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XV. DATES ON WHICH TRIAL COUNSEL MAY HAVE COMPLICATIONS REGARDING TRIAL DATE

Counsel do not anticipate any complications at this time.

XVI. CONFIRMATION OF SERVICE

All parties have been served.

1 **XVII. SCHEDULING CONFERENCE**

2 The parties do not request a scheduling conference at this time.

3 **XVIII. DATE OF RULE 7.1 DISCLOSURE FILING**

4 Defendant Zillow filed its corporate disclosure statement on December 9, 2022 (Doc.
5 No. 27). Defendant Microsoft Corporation filed its corporate disclosure statement on October
6 18, 2022 (Doc. No. 15).

1 DATED: March 31, 2023

Respectfully submitted,

2 /s/ Joseph P. Guglielmo

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